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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]. 1969.

No. [redacted] 176

JOHN IKE GRIFFITH,
Petitioner,

vs.

BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR,
Respondent.

BRIEF OF RESPONDENT.

M. ROLAND NACHMAN, JR.,
1109-1125 First National Bank Building,
Montgomery, Alabama 36104,
Special Counsel for Respondent,

WILLIAM H. MORROW, JR.,
Alabama State Bar,
Post Office Box 2106,
Montgomery, Alabama 36103,
General Counsel.

ST. LOUIS LAW PRINTING CO., INC., 411-15 N. Eighth St., 63101. CEntral 1-4477.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968.

No. 1460.

JOHN IKE GRIFFITH,
Petitioner,

vs.

BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR,
Respondent.

BRIEF OF RESPONDENT.

INTRODUCTION.

This Brief of Respondent is filed in opposition to a Petition for Writ of Certiorari to the Supreme Court of Alabama. Respondent respectfully submits that the Petitioner has failed to submit any federal question of substance not heretofore determined by this Court or decided in a way probably not in accord with the applicable decisions of this Court.

QUESTIONS PRESENTED.

The Petitioner has presented four questions. The Respondent submits that the questions presented are more clearly and accurately stated as follows:

QUESTION A: Does the United States Constitution require the federal and state courts to afford a trial by jury to an attorney in a disbarment proceeding?

QUESTION B: Where the statutory law of the State of Alabama as interpreted by the Supreme Court of Alabama requires that at least one party to a divorce proceeding be a bona fide resident of the State, does Rule 25, Section A, Rules of the Supreme Court of Alabama Governing the Conduct of Attorneys in Alabama, which prohibits attorneys from introducing perjured testimony on the issue of residency "with knowledge or reasonable cause to believe" that such testimony is false, raise a substantial federal question under the due process and equal protection clauses of the Fourteenth Amendment, United States Constitution?

QUESTION C: Does the due process clause of the Fourteenth Amendment, United States Constitution, prohibit the Judicial Department of the State, through the Supreme Court of Alabama and the Board of Commissioners of the Alabama State Bar, as an arm of said Court, from enacting rules governing the conduct of attorneys and investigating, charging and determining the guilt or innocence of attorneys charged with a violation of such rules?

QUESTION D: Does the use of depositions in a disciplinary proceeding against an attorney, which proceeding is not a criminal prosecution and can result in a reprimand, suspension or disbarment, but cannot result in fine or imprisonment, raise a substantial constitutional question under the Sixth and Fourteenth Amendments, United States Constitution?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED.

In addition to the constitutional provisions, statutes and rules set forth in the Appendix to the Petition for Writ of Certiorari, the Respondent calls the following to the attention of the Court as set forth below in the Appendix to this Brief of Respondent:

Title 46, § 36, Code of Alabama, 1940;

Rules of the Alabama Supreme Court Governing the Conduct of Attorneys in Alabama;

Rule 3, Sec. B
Rule 6, Sec. B
Rule 10, Sec. B
Rule 12, Sec. B
Rule 13, Sec. B
Rule 19, Sec. B

ARGUMENT.

QUESTION A.

Does the United States Constitution require the federal and state courts to afford a trial by jury to an attorney in a disbarment proceeding?

It would present a strange anomaly if the due process and equal protection clauses of the Fourteenth Amendment, United States Constitution, granted to a litigant in the state courts greater procedural safeguards than the Bill of Rights, United States Constitution, grants to a similar litigant in the federal courts. Certainly the privilege of membership in the bars of the various federal courts is of a dignity and value equal to such membership in the bars of the state courts.

Therefore, the initial inquiry must be: Is a federal court required to grant a trial by jury before striking an attorney's name from the roster of such court's officers?

This question was clearly and emphatically answered by this Court in **Ex parte Wall**, 107 U. S. 265, which involved the disbarment of an attorney by a United States District Judge, wherein the Court held that a proceeding to disbar an attorney is one within the proper jurisdiction of the court of which he is an attorney, and does not violate the constitutional provisions which require an indictment and trial by jury in criminal cases, as it is not a criminal proceeding to punish the attorney, but intended to protect the court from the ministrations of persons unfit to practice as attorneys.

The Petitioner concedes that he has no right to trial by jury under the Alabama Constitution. The Supreme Court of Alabama in **Ex parte Thompson**, 228 Ala. 113,

152 So. 229, in an opinion, which presented an exhaustive review of the authorities on the subject, held that the Alabama Constitution guaranteed the right to trial by jury as it existed at common law; that the courts possessed the inherent right to discipline attorneys as officers of the courts (citing **Ex parte Wall**, supra), and that the Alabama Constitution did not preserve the jury trial provision in a pre-existing territorial statute, one justice observing that the Alabama Constitution itself provided that territorial laws should be continued in force only until altered or repealed by the legislature. **Thompson** has been consistently followed in **In re Fite**, 228 Ala. 4, 152 So. 246; **Ex parte Messer**, 228 Ala. 16, 152 So. 244; **Ex parte Walker**, 228 Ala. 130, 152 So. 246; **In re McKay**, 280 Ala. 174, 191 So. 2d 1, and was followed by the court below in the instant case.

The supreme court of a state is the final arbiter on the question of the conflict between a state statute and the state constitution. **Walker v. Savinet**, 92 U. S. 90; **Stone v. Wisconsin**, 94 U. S. 181; **Merchants and Manufacturers National Bank of Pittsburg v. Pennsylvania**, 167 U. S. 461; **Thornton v. Duffy**, 254 U. S. 361; **Terrace v. Thompson**, 263 U. S. 197. In **Randall v. Brigham**, 74 U. S. 523, this Court held that the decision of the supreme court of a state that the removal of an attorney without formal legal process is not in violation of the constitution of the state, it not being called in question by any conflicting decision of this Court, is conclusive upon this Court. The same applies to the right to trial by jury.

The above cited authorities establish that this Court will not question the Supreme Court of Alabama's interpretation of the Alabama Constitution.

Since the United States Constitution guarantees to Petitioner no right to trial by jury in a disbarment pro-

ceeding in the federal courts, *a fortiori*, it guarantees no such right in the state courts.

The Petitioner does not present any federal question for review.

QUESTION B.

Where the statutory law of the State of Alabama as interpreted by the Supreme Court of Alabama requires that at least one party to a divorce proceeding be a bona fide resident of the State, does Rule 25, Section A, Rules of the Supreme Court of Alabama Governing the Conduct of Attorneys in Alabama, which prohibits attorneys from introducing perjured testimony on the issue of residency "with knowledge or reasonable cause to believe" that such testimony is false, raise a substantial federal question under the due process and equal protection clauses of the Fourteenth Amendment, United States Constitution?

The Supreme Court of Alabama has held that one party to divorce proceedings must be a bona fide resident of the State. **Jennings v. Jennings**, 251 Ala. 73, 36 So. 2d 236.

In **Levy v. Levy**, 256 Ala. 629, 56 So. 2d 344, and **Hilley v. Hilley**, 275 Ala. 617, 156 So. 2d 215, the Supreme Court of Alabama held that no specific period of residency in Alabama is required and that the sufficiency of the evidence on the question of residency is reviewable on appeal. In **Aiello v. Aiello**, 272 Ala. 505, 133 So. 2d 18, the Supreme Court of Alabama held that a certain party, under the circumstances, failed to set forth sufficient grounds for setting aside a final decree of divorce.

However, the validity *vel non* of the divorce decree is beside the point. The possible laches or estoppel of a party is equally beside the point. It is the conduct of the attorney with which Rule 25, Section A, is concerned.

The fact that there may be three parties to the perpetration of a fraud upon the court, namely, the complainant, the respondent and the attorney, and the circumstances are such that perhaps both complainant and respondent are estopped to challenge the validity of the decree, does not purge the attorney of wrongdoing if he, in fact, had "knowledge or reasonable cause to believe that neither party . . ." was a bona fide resident. "Rule 25, Section A, in no way departs from the applicable divorce statutes as to jurisdiction, nor the decisions thereunder, but re-enforces these principles." **In the matter of Thomas W. Sullivan,** ... Ala. ..., 219 So. 2d 346. The Petitioner erroneously assumes that attorneys practicing in other fields of the law than that of divorce practice, who submit evidence to a court with knowledge or reasonable cause to believe in its falsity, are immune from discipline. Policy has always dictated that attorneys must be disciplined for participating in a fraud upon the courts. Rule 25, Section A, merely implements this policy. It is difficult to conceive that the due process and equal protection clauses of the Fourteenth Amendment, United States Constitution, could preclude a state from attempting to prevent attorneys from perpetrating frauds upon its courts.

QUESTION C.

Does the due process clause of the Fourteenth Amendment, United States Constitution, prohibit the Judicial Department of the State, through the Supreme Court of Alabama and the Board of Commissioners of the Alabama State Bar, as an arm of said Court, from enacting rules governing the conduct of attorneys and investigating, charging and determining the guilt or innocence of attorneys charged with a violation of such rules?

Petitioner asserts that the Fourteenth Amendment, United States Constitution, prohibits the Judicial Department of the State of Alabama acting through its supreme

authority, the Supreme Court of Alabama, and the Board of Commissioners of the Alabama State Bar, an arm of said Court, from controlling the subjects of admissions and disbarments of attorneys at law. Although the Board of Commissioners of the Alabama State Bar was organized under the aegis of legislation, attorneys at law are officers of the courts and the determination of their status as such is essentially a judicial rather than a legislative or executive function. **Sullivan v. Alabama State Bar,** SCUS, OT 1968, No. 1170. The judicial department of the federal government and the judicial departments of state governments possess inherent power over the subjects of admissions and disbarments of attorneys as officers of their respective courts. **Ex parte Secombe,** 60 U. S. 9; **Ex parte Bradley,** 74 U. S. 364; **Ex parte Robinson,** 86 U. S. 513; **Ex parte Wall,** supra; **Ex parte Thompson,** supra.

Petitioner complains that he has been ". . . regulated, investigated, charged, tried, convicted and punished . . ." Petitioner fails to observe that each step in these proceedings was taken under the inherent power of the judicial department of state government, acting pursuant to statutes which do not constitute a legislative intrusion into a judicial function, but rather a legislative recognition that inherent powers in such matters vest in the judicial department.

Since we are dealing with the essential functions of the judicial department of state government, the constitutional doctrine of "separation of powers" is beside the point. However, it should be noted that Petitioner is contending that the actions of the Board of Commissioners of the Alabama State Bar and the Supreme Court of Alabama are violative of the **State** Constitution (Article 6, Section 139; Article 3, Section 42; Article 3, Section 43, Constitution of Alabama, 1901). He then advances to the conclusion that the due process and equal protection

clauses of the Fourteenth Amendment, United States Constitution, have been abridged, without any supporting argument or citation of authority. Even if we were here dealing with matters which were not within the exclusive prerogative of the judicial department, the Fourteenth Amendment leaves the states free to distribute the powers of government as they will between their legislative and judicial branches. **Dreyer v. Illinois**, 187 U. S. 71; **Missouri v. Dockery**, 191 U. S. 165; **Prentis v. Atlantic Coast Line Co.**, 211 U. S. 210; **Crowell v. Benson**, 285 U. S. 22; **International Brotherhood of Teamsters v. Hank**, 339 U. S. 470.

The Petitioner appears to grant that the issue of Alabama Constitutional law has been conclusively resolved by the Supreme Court of Alabama in Ex parte **Thompson**, supra, ". . . Thus we find express constitutional warrant for conferring upon *this board* judicial functions. . . ." and since the entire process of disciplining attorneys as officers of the courts is essentially judicial in nature and is performed under the authority of the Alabama Constitution by the Board of Commissioners as an arm of the Supreme Court of Alabama and under its ultimate supervision and control, no federal question is presented for review. As heretofore noted, this Court has held that it will not question the Supreme Court of Alabama's interpretation of the Alabama Constitution (p. 5, supra).

QUESTION D.

Does the use of depositions in a disciplinary proceeding against an attorney, which proceeding is not a criminal prosecution and can result in a reprimand, suspension or disbarment, but cannot result in fine or imprisonment, raise a substantial constitutional question under the Sixth and Fourteenth Amendments, United States Constitution?

The Petitioner in these proceedings has been afforded a full and fair hearing and has been given every opor-

tunity to present any defensive matter available to him before the Commissioner appointed to take testimony, before the Board, at which time arguments on both the law and the facts were heard, and before the Supreme Court of Alabama, where the cause was determined after the submission of written briefs and the hearing of oral argument, said Court entertaining no presumption as to the correctness of the Board's findings on the law or the facts. **Ex parte Acton**, ... Ala. ..., 214 So. 2d 685.

The Petitioner was given ample notice of the charges against him (Rule 6, Section B, Rules Governing the Conduct of Attorneys in Alabama, (A. A-2); was represented throughout all proceedings by able counsel who thoroughly examined all witnesses against him, and was afforded the opportunity to present witnesses in his own behalf or testify in his own behalf (Title 46, § 36, Code of Alabama, 1940, A. A-1).

As the Court below observed, Rule 19, Section B, provides that ". . . the Board shall consider only such evidence as is, in its opinion, relevant, material, or competent and it shall not consider any testimony which, in its opinion, is irrelevant, immaterial or incompetent." (Rule 19, § B, Rules Governing the Conduct of Attorneys in Alabama, A. A-3). The Court further stated "On this review we so limit ourselves." The Supreme Court of Alabama, therefore, affirmed the Board in finding the Petitioner guilty of the charges and fixing the discipline at disbarment upon "relevant, material and competent evidence." The Petitioner was not found guilty by a jury of laymen incapable of discerning between admissible and inadmissible evidence, but was tried by a group of his fellow attorneys and by the Justices of the Supreme Court of Alabama.

Assuming that depositions would not be admissible in "criminal prosecutions" as described in the Sixth Amend-

ment, United States Constitution, clearly the due process clause of the Fourteenth Amendment does not preclude the use of depositions in a proceeding resulting in the revocation of a professional license. Title 46, §25, Code of Alabama, 1940, provides that ". . . the evidence of witnesses residing outside of such county (residence of the party charged) may be taken in the same manner as provided by law for the taking of depositions in civil cases" (Appendix, Petition for Writ of Certiorari, B2-B4), and Rule 19, Section B, Rules of the Supreme Court of Alabama Governing the Conduct of Attorneys in Alabama, provides for ". . . depositions . . . as provided by law" (A. A-3). In **Missouri ex rel. Horwitz v. North**, 271 U. S. 40, a Missouri statute was upheld which authorized the State Board of Health to revoke licenses to practice medicine for certain specified causes and provided that: "Testimony may be taken by deposition to be used in evidence at the trial of such charges before the Board in the same manner and under the same rules and practice as is now provided for the taking of depositions in civil cases."

True, the Supreme Court of Alabama in **Ex Parte Messer**, 228 Ala. 16, 152 So. 244, denominated disciplinary proceedings against attorneys as quasi criminal in nature, but expressly held that depositions were admissible. It should be noted that the Petitioner, through his attorney, attended the taking of the depositions and subjected the witnesses to thorough cross-examination (R. 296-304, 330-349). A number of states have held that depositions are admissible in disciplinary proceedings against attorneys. **In re Morganstern**, 61 Cal. App. 702, 215 P. 721; **State ex rel. Kehoe v. McRae**, 49 Fla. 389, 38 So. 605; **Florida ex rel. Bar Asso. v. Junkin** (1956, Fla.), 89 So. 2d 481; **People v. Stonecipher**, 271 Ill. 506, 111 N. E. 496; **State v. Mosher**, 128 Iowa 82, 103 N. W. 105; **In re Wellcome**, 23 Mont. 259, 59 P. 711; **State v. Priest**, 118 Neb. 47, 223 N. W. 635. The

rationale of such cases is found in the fact that such proceedings are not "criminal prosecutions" resulting in fine or imprisonment but have as their sole function the purging of the role of legal practitioners of an unworthy or disreputable member. **Ex Parte Wall,** supra.

The fact that the witnesses did not personally appear before the Board of Commissioners of the Alabama State Bar or before the Supreme Court of Alabama raises no substantial federal question for review. The Petitioner was afforded hearings before both bodies and presented argument on the law and the facts. **State ex rel. Wedderburn v. Bliss,** 12 App. D. C. 485; **McVicar v. State Board of Law Examiners,** 6 F. 2d 33 (D. C. Wash. 1925).

The Petitioner was given ample notice of the nature of the charges lodged against him. He was given full and fair hearings before the Commissioner appointed to take testimony, with an opportunity to present testimony in his defense. Petitioner presented argument on both the law and the facts before the Board of Commissioners and before the Supreme Court of Alabama. "The due process clause does not guarantee to a citizen of a State any particular form or method of state procedure. Its requirements are satisfied if he has reasonable notice, and reasonable opportunity to be heard and to present his claim or defence, due regard being had to the nature of the proceedings and the character of the rights which may be affected by it." **Missouri ex rel. Horwitz v. North,** supra.

The cases cited by the Petitioner are completely irrelevant to the instant proceedings. **International Shoe Company v. Washington,** 326 U. S. 310, dealt with whether a party was "doing business" within a state, and **Berger v. California,** 89 S. Ct. 540, and **Pointer v. Texas,** 380 U. S. 400, involved "criminal prosecutions".

CONCLUSION.

The Petitioner has not raised any federal question for review. For the reason stated herein, it is respectfully submitted that the Petitioner's Writ of Certiorari should be denied.

Respectfully submitted,

M. ROLAND NACHMAN, JR.,
1109-1125 First National Bank Building,
Montgomery, Alabama 36104,
Special Counsel for Respondent.

WILLIAM H. MORROW, JR.,
Alabama State Bar,
Post Office Box 2106,
Montgomery, Alabama 36103,
General Counsel.